

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

*In Re: Platinum And Palladium
Commodities Litigation*

Master File No. No. 10 Civ. 3617 (WHP)

This Document Relates To:

Platinum/Palladium Physical Action

**Physical Plaintiffs' Status Report Concerning Progress Of
Executing The Program Of Notice To The MF Global Physical Class**

Counsel for the Physical Class hereby provides the Court with a status report concerning the progress of the notice program pursuant to the November 14, 2014 Order Preliminarily Approving the Proposed Physical Class Settlement with defendant MF Global, Inc. (ECF No. 244). All components of the proposed program of notice approved by the Court on November 14, 2014 have been accomplished, with one revision due to a change in the publication schedule of *Futures & Options World* magazine, which was remedied by running additional advertisements to reach readers and subscribers.

1. Status of Court-approved program of notice

On November 14, the Court issued an order approving the notice program for the MF Global proposed Physical Action Settlement and ordered the Settlement Administrator, A.B. Data, Ltd., to execute the Court-approved notice program to the Physical Class. (ECF No. 244.) The expansive notice program included notice publication of the Settlement: (a) for two consecutive months in *Futures & Options World* magazine; and (b) one month on the *Futures & Options World* website, along with numerous other publications. *Id.* at 8. A settlement website was to be established, which is searchable on the internet and allows Physical Class members to obtain information about the proposed Settlement, including access to the Settlement Agreement, the Motion for Preliminary Approval, the Proof of Claim and answers to anticipated questions about class actions settlements. *Id.* at 9. The

website created by the Settlement Administrator was to be located at www.PlatinumPalladiumPhysicalLitigation.com. *Id.*

The Court ordered the Settlement Administrator mail copies of the Class Notice to the following entities along with the request these entities forward the Class Notice to all persons who purchased or acquired an interest in Platinum and/or Palladium Bullion through their business during the Class Period: (a) MONEX Credit Company; (b) APMEX, Inc.; (c) Dillon Gage, Inc.; (d) Kitco Metals, Inc.; and (e) the United States Mint. *Id.* at 7.

The Court also ordered the Class Notice and Summary Notice to be distributed in the Futures Action shall include language advising futures class members of the proposed Physical Action settlement and include the web address for the Physical Action settlement website (www.PlatinumPalladiumPhysicalLitigation.com). *Id.* at 10. Similarly, the Court directed the Class Notice and Summary Notice distributed in the Physical Action contain information regarding the Futures Action settlement. *Id.*

2. Status of Court-ordered notice components and website

To date, all Court-ordered notice provisions have been executed. Publication notice commenced as soon as practicable, specifically, (a) one-half page notification was/will be published in the January and February 2015 issues of *Futures* magazine; (b) one-half page notification was/will be published in the

January and February 2015 issues of *Stocks & Commodities* magazine; (c) one-half page notification was published, or will be published, in eight consecutive weekly issues of *Futures & Options World* e-newsletter on December 5, 12, 19 and January 2, 9, 16, 23, 30; and (d) one-sixth page notification was published in the December 1, 8, 15, and 22 Monday editions of *Investor's Business Daily*. Physical Plaintiffs published notice in two of the most popular investment periodicals, *Barron's* and *The Wall Street Journal*. A one-half page notification was published in the December 8 and 15, 2014 weekly editions of *Barron's*, and in *The Wall Street Journal*, notice was published in the form of one-sixth page notices in the December 5 edition and will be published in the January 9, 2015 edition.

Notice of the Settlement was also published on the following websites in the form of banner advertisements: (a) from December 1, 2014 through December 31, 2014 on the *Stocks & Commodities* magazine website; (b) from December 1, 2014 through December 31, 2014 on the *Futures* magazine website; (c) from January 1, 2015 through January 31, 2015 on the *Futures & Options World* website; (d) from December 1, 2014 through December 31, 2014 on the *Investors Business Daily* website; and (e) from December 1, 2014 through December 31, 2014 on the *Kitco.com* website.

Pursuant to the Court's instructions at the November 12, 2014 preliminary approval hearing, the mailed notice prominently advises Physical Class members,

in red lettering and twice on the notice's first page, the notice they are receiving is separate and in addition to the notice they previously received concerning the Moore Defendants settlement, and the notice requires separate review. Additionally, similar language, in red lettering, was placed on the outside of the mailing envelope to further alert Physical Class members of the new information.

The mail notice also clearly informed Physical Class members that while they need only file a single proof of claim in order to participate in both the MF Global Settlement and the Moore Defendants Settlement, they must submit separate objections and/or separate requests for exclusions in respect of each of the two proposed settlements.

The Physical Class's website for the MF Global Settlement and the Moore Defendant Settlement clearly advises Physical Class members these are two separate settlements. Each settlement has a separate link and webpage. And similar to the Class Notice, in distinct red text on the Physical Class website, it advises Physical Class members they need file only a single proof of claim to participate in both settlements, but separate objections or requests for exclusion should be filed for each settlement.

3. Physical Class Counsel's and the Settlement Administrator's additional outreach efforts

The Settlement Administrator mailed copies of the Class Notice to the following entities with the request these entities forward the Class Notice to all

persons who purchased or acquired an interest in Platinum and/or Palladium Bullion through their business during the Class Period: (a) Monex Credit Company (“Monex”); (b) APMEX, Inc. (“APMEX”); (c) Dillon Gage, Inc. (“Dillon Gage”); (d) Kitco Metals, Inc. (“Kitco”); and (e) United States Mint. To date, neither A.B. Data nor Physical Class Counsel have received any response from APMEX or Dillon Gage. The United States Mint referred our request to the United States Attorney General’s office.

Direct mail notice was provided to thirty-one large investment institutions, notifying the entities of the proposed Settlement. These are entities who have been identified as either having purchased, or who likely purchased, Platinum or Palladium bullion during the Class Period. Each letter included a copy of the long form notice, the link to the settlement website and a request this notice be forwarded to any clients who may have purchased Platinum or Palladium Bullion. The Class Notice and request was sent to the following investment banks/entities:

(1) American International Group, Inc. (AIG); (2) Ally Financial, Inc.; (3) Bancwest Corp.; (4) Bank of America Corp.; (5) Barclays Delaware Holdings, LLC; (6) BB&T Corp.; (7) BBVA Compass Bancshares, Inc.; (8) Bank of New York Mellon Corp.; (9) Capital One Financial Corp.; (10) Citigroup, Inc.; (11) Credit Suisse; (12) Deutsche Bank Trust Corp.; (13) Fifth Third Bancorp.; (14) Goldman Sachs Group, Inc.; (15) HSBC Bank USA, N.A., (16) Huntington

Bancshares, Inc.; (17) JP Morgan Chase Bank, N.A., (18) M&T Bank Corp.; (19) Morgan Stanley & Co., LLC; (20) Unionbancal Corp. a/k/a MUFG American Holdings Corp.; (21) PNC Financial Services Group, Inc.; (22) RBC Capital Markets; (23) Royal Bank of Canada (RBC); (24) RBS Citizens Financial Group, Inc.; (25) Regions Financial Corp.; (26) Suntrust Banks, Inc.; (27) Synovus Financial Corp.; (28) TD Bank US Holding Co.; (29) UBS; (30) U.S. Bancorp.; and (31) Wells Fargo & Co. The aforementioned letters were sent via U.S. Mail, postage prepaid, and follow-up will be conducted by Physical Class Counsel and the settlement administrator. Copies of the Class Notice also were mailed to additional retailers of Platinum and Palladium Bullion with the request these entities forward the Class Notice to all persons who purchased or acquired an interest in Platinum and/or Palladium Bullion during the Class Period. These entities are Provident Metals of Dallas, Texas, JM Bullion of Dallas, Texas, Bullion Direct of Austin, Texas and CMI Gold & Silver, Inc. of Phoenix, AZ. The aforementioned letters were sent via U.S. Mail, postage prepaid. All of the addresses previously obtained in connection with the mailing of notice for the Moore Defendant Settlement were used to provide notice of the MF Global Settlement.

As noted above, the Settlement Administrator sent notice of the Settlement to Monex, APMEX and Dillon Gage, along with a request these entities forward Class

Notice of the Settlement to any customers who purchased or otherwise acquired an interest in Platinum or Palladium Bullion during the Class Period. To date, however, neither APMEX nor Dillon Gage have responded to this request.

4. Conclusion

The Court-mandated notice components have been fully executed, along with additional follow-up efforts to ensure as many putative class members are notified of the settlement, with the exception of the change in publication schedule by *Futures & Options World* magazine, for which alternative methods of distribution were immediately implemented by the Settlement Administrator. Physical Plaintiffs believe the notice program has been robust, extensive, and has been the best notice practicable under the circumstances.

Dated: January 7, 2015
San Diego, California

Respectfully submitted,

/s/ John A. Lowther

John A. Lowther
DOYLE LOWTHER LLP
10200 Willow Creek Road, Suite 150
San Diego, CA 92131
(858) 935-9960 phone
(858) 939-1939 fax

*Counsel for Physical Plaintiffs and the
Physical Class*